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17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA,) No. CR 08-0160 SI
23 Plaintiff,)
24 v.) STIPULATION AND [Proposed] ORDER TO
EXTEND PROBATION
25 FLEET MANAGEMENT LIMITED,)
26 Defendant.)
27
28

The United States of America, by and through the United States Attorney's Office for the

1 Northern District of California and the Environmental Crimes Section of the U.S. Department of
2 Justice (hereafter "the government"), and the Defendant, FLEET MANAGEMENT LTD.
3 (hereafter "Defendant" or "Fleet"), by and through undersigned counsel, hereby submit the
4 following stipulation and proposed order to extend probation.

5 **I. Procedural History**

6 1. On February 19, 2010, this Court sentenced Fleet to a fine and three years
7 probation for its role in the Cosco Busan incident and related charges. The term of probation is
8 due to expire on or about February 18, 2013.

9 2. Pursuant to the Plea Agreement, and consistent with sentencing policies set forth
10 in USSG § 8D1.4, and as a condition of probation and the Court's sentencing Order, Fleet was
11 required to develop, adopt and implement and fund certain remedial measures to include an
12 Enhanced Compliance Program ("ECP") as set forth in Attachment B to the Plea Agreement.

13 3. Pursuant to the ECP, Fleet was required to conduct various types of training and
14 implement new procedures documenting the training, including command orientation training,
15 shore-side safety management system training, and type specific training on electronic navigation
16 equipment. Fleet was also required under the ECP, to engage in enhanced voyage planning,
17 enhanced Master-Pilot exchanges before entering and departing each port, and to maintain an
18 open reporting system to promote internal reporting of non-compliance.

19 4. Pursuant to the ECP, Fleet also was required to retain an outside and independent
20 auditor, termed the Third Party Auditor ("TPA") to conduct a study of the content and
21 implementation of Fleet's existing safety management system, as well as to conduct external
22 audits on a percent of Fleet vessels engaged in trade in the United States (25 percent of the
23 vessels, or no less than 24 or more than 36 vessels per year). At least 50 percent of these audits
24 were to be conducted while the vessel was navigating underway.

25 5. Pursuant to the ECP, Fleet also was required to fund a Court Appointed Monitor
26 ("CAM") to work on behalf of the Court and the Office of Probation.

27 6. On November 11, 2011, the United States Office of Probation filed a form 12A
28 petition alleging a possible violation of probation concerning the Promise 2.

1 **II. Stipulations**

2 The United States and Fleet hereby stipulate that the following facts are true and accurate
3 and sufficient to provide a basis to continue the existing terms of probation for fifteen additional
4 months:

5 1. The parties have jointly submitted a letter to U.S. Probation dated December 20,
6 2012, summarizing various reports concerning the implementation of the ECP.

7 2. As set forth in the letter to U.S. Probation dated December 20, 2012, Fleet's
8 internal auditing has improved as has its overall compliance with the ECP during the period of
9 probation. At the same time, there are certain matters that warrant further attention.

10 Accordingly, the parties jointly believe that an additional fifteen months of probation would be
11 beneficial in assuring that the ECP is fully implemented and has fully achieved its stated goals.

12 **III. Joint Recommendation and Motion**

13 Based upon the facts set forth in the joint letter dated December 20, 2012, the stipulations
14 set forth herein, and the entire record of this matter, the parties jointly request that the Court
15 resolve the pending petition and such other matters as have been heretofore raised by the parties,
16 the CAM , and/or TPA by ordering the following:

17 1. Continuing the period of probation, from February 18, 2013, to and including May
18 18, 2014, a period of fifteen months, pursuant to 18 U.S.C. § 3564(d). During this continued
19 period of probation, the current conditions of probation, including the terms of the ECP, will
20 remain in effect, subject to the following modifications:

21 a. Pursuant to Paragraph IV(d) of the ECP, and during the continued period
22 of probation, Fleet shall assure that the TPA conducts 33 audits. As set forth in the ECP, at least
23 half of the TPA audits shall be underway audits. The TPA will submit the reports of such audits
24 during the continued period of probation, and not later than three months prior to the expiration
25 of the continued period of probation.

26 b. Pursuant to paragraph IV(c) of the ECP, the TPA will conduct one
27 shoreside audit during the continued period of probation.

28 c. During the continued period of probation, a new CAM acceptable to the

United States will be selected consistent with the provisions of Section VI of the ECP. Within 30 days of the signing of this Order, Fleet shall submit to the United States at least five qualified candidates to serve as CAM. The United States shall select one of the candidates or request an additional slate of five qualified candidates within 30 days of receiving defendant's slate of candidates. The new CAM shall complete all reports required by the ECP not later than two months prior to the expiration of the continued period of probation.

SO STIPULATED:

MELINDA HAAG
United States Attorney

Dated: February 1, 2013

/S/
JONATHAN SCHMIDT
Assistant United States Attorney

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

Dated: February 1, 2013

/S/
RICHARD A. UDELL
Senior Trial Attorney
Environmental Crimes Section

Dated: February 1, 2013

/S/

Dated: February 1, 2013

/S/
MICHAEL G. CHALOS
Attorney for Defendant

[Proposed] ORDER

GOOD CAUSE APPEARING, and per the parties' stipulation, the Court continues the period of Fleet Management Limited's probation in CR 08-0160-SI Counts 1,5 and 8, to run concurrent from February 18, 2013, to and including May 18, 2014, for a period of fifteen months, pursuant to 18 U.S.C. § 3564(d). During this continued period of probation, the current conditions of probation, including the terms of the Enhanced Compliance Program ECP, will remain in effect, subject to the following modifications:

a. Pursuant to Paragraph IV(d) of the ECP, and during the continued period of probation, Fleet shall assure that the TPA conducts 33 audits. As set forth in the ECP, at least half of the TPA audits shall be underway audits. The TPA will submit the reports of such audits during the continued period of probation, and not later than three months prior to the expiration of the continued period of probation.

b. Pursuant to paragraph IV(c) of the ECP, the TPA will conduct one shoreside audit during the continued period of probation.

c. During the continued period of probation, a new CAM acceptable to the United States will be selected consistent with the provisions of Section VI of the ECP. Within 30 days of the signing of this Order Fleet shall submit to the United States at least five qualified candidates to serve as CAM. The United States shall select one of the candidates or request an additional slate of five qualified candidates within 30 days of receiving defendant's slate of candidates. The new CAM shall complete all reports required by the ECP not later than two months prior to the expiration of the continued period of probation.

IT IS SO ORDERED

Dated: 2/5/13

Susan Ilston

Honorable Susan Illtson
United States District Court